

### REMARKS/ARGUMENT

Claims 1-64 are now presented for examination. Claims 1-5, 7, 8, 12-36, 48-54, 59 and 62 have been amended for clarification purposes only, without narrowing the claims. Claims 63 and 64 have been added to provide Applicants with a more complete scope of protection.

Claims 1, 19, 27, 37, 48, 59 and 61-64 are independent claims.

Claims 1-62 were rejected under 35 U.S.C. § 112, second paragraph, as being too broad. Applicants traverse.

The test for whether a claim is indefinite is whether a person of ordinary skill in the art, after having read the specification, can determine if a given device or method falls within the scope of the claim in question. This is the only test.

In the Office Action, the Examiner stated that the claims were “far too broad to provide insight into the novelty of the disclosure.” This “test” for meeting section 112, second paragraph is unknown to Applicants. The Examiner is requested to cite, in an affidavit, the statute, regulation or case law that it is based on. Absent such a showing, the rejection should be withdrawn as improper. For at least these reasons, the rejection is believed to be obviated.

Claims 1-62 were rejected under 35 U.S.C. § 103 as obvious from U.S. Patent 6,282,521 (Howorka) in view of U.S. Patent 6,317,727 (May). Applicants traverse and submit that the independent claims are patentable for at least the following reasons.

In an anonymous trading system, such as, for example, the one taught in the Togher et al. patent (U.S. Patent 5,375,055), the parties do not know the identity of counterparty bids and offers that they see displayed on their screens. Consequently, each party

trading on the system will set credit limits for trades with all other possible counterparties on the system. These credit limits can be updated, for example, at the beginning of each trading day by a bank's trading floor administrator. The system of Togher et al. screens the bids and offers that are displayed to any given trading floor to eliminate those with which the trading floor does not have credit. Thus, the only bids and offers that are displayed to a trading floor are those which they can deal.

In such a system, when a deal is completed, the amount of the deal is subtracted from the credit limit for further deals with the same counterparty. The sense of the deal, that is whether it is a buy or sell, is not taken into account. Thus, if a bank has credit of \$100M with another bank, sells \$50M to that other bank and then buys back \$50M, the credit limit is adjusted by \$50M each time so that the total credit usage is \$100M. In other words, there is no credit left and no further deals can be done with that party until the credit limit is adjusted. This reduction of credit does not represent the actual position. As the bank has sold \$50M and then bought \$50M back, the net position is zero.

The present invention, as defined by the independent claims, on the other hand, takes into account the sense of a trade so that a buy trade has the opposite effect on the credit limit to a sell trade. As a result, the total exposure with regard to credit is based on a netting of trades between the traders.

As a result of the claimed structure or steps, *credit limits* are netted. This is to be contrasted with, and is different from, the known netting of *monies* owed by one party to another at settlement so that if both parties owe each other money, only the balance is transferred.

The claimed invention advantageously enables more trading within the same credit limit, thereby increasing revenues generated from trading. As a result, a bank does not need to allocate as much credit to the trading system for a given amount of trading activity as it

would have to in the prior art. A bank will trade across a broad range of systems and markets and credit in any one of those will be allocated from a general credit pool. By reducing the amount of credit that needs to be allocated to one system, such as in the present invention, there is more credit available for allocation elsewhere and hence an increase in the bank's ability to trade.

With regard to the rejection based on the cited art, Applicants submit that: (1) the description of May in the Office Action is incorrect; and (2) contrary to the allegation in the final sentence of section 4 of the Office Action, there is no motivation to combine Howorka and May. Indeed, it is submitted that May teaches away from Howorka as shall be explained below.

The Howorka system filters out quotes with which a trading floor does not have credit so that the market distributors only distribute dealable quotes. In Howorka, the market maker (the party that submitted a visible quote into the market) receives an indication when that quote is at the head of any counterparties dealable quotes. In other words, they are notified when their quote is the best dealable quote available to one or more counterparties. This notification is in the form of the quote turning red on the trader's screen.

The nature of the Howorka system, and the credit relationships that exist between banks, is such that any quote is likely to be the best dealable quote at one counterparty. Thus, the idea of notifying the market maker is good in theory but does not work in practice. Accordingly, the invention only notifies the market maker when a pre-determined substantial number of trading floors are seeing the market makers quote as the best dealable quote. Something in the order of 25% is mentioned in the patent.

Although Howorka is not limited to trading a particular financial instrument or commodity, it is used, and mainly intended, for spot market products. This means that settlement of deals made on the system takes place shortly after the deal is made. In the Spot

FX market this is typically three days later. Thus, the risk taken by a bank in entering into a trade only lasts until settlement. At that time they find out whether or not they are going to get paid.

The May patent is specifically and deliberately directed away from this type of trading. The background to the invention section in columns 1 - 5 reviews the system of Togher et al. and a Reuters system as disclosed in U.S. Patent No. 5,077,665 and U.S. Patent No. 5,136,501 in detail and then explains why those two systems are unsuitable for derivative products such as interest rate swaps, caps, floors, Forward Rate Agreements (FRA's), interest rate basis swaps, interest rate options, switches or other over the counter derivative options. As May explains at column 4 beginning at line 46, derivatives had been considered to be too complex to be handled within an electronic trading system. In the paragraph commencing at column 4, line 65 assessing credit risk is advanced as one of the reasons why derivatives are difficult to trade. Many derivative products have settlement dates which are far distant. For example, a Forward Rate Agreement could have a three, six or nine month term.

Thus, the May patent specifically sets out to provide a system which is irreconcilable with the approach to credit used in Togher et al., as well as the Howorka patent. This counters the suggestion that there would be any motivation to combine these two documents. In fact, the converse is true. May is specifically teaching the skilled person *not* to combine the two documents. May teaches that the trading and credit regime like that of Howorka is inappropriate and incapable of dealing with trades in the type of products to which May is directed.

Further, May does not use actual credit limits in the manner required by the present invention. Because there are no credit limits as such, there can be no netting of credit to avoid parties reaching those limits, as in the claims.

May, in reaction to the difficulties in assessing credit risk for derivative products, due to their complexity, establishes multi-level credit preferences. These are not credit limits. May still uses bi-lateral credit screening but does not use actual credit limits.

May approaches trading from the viewpoint that derivative products are complex and must be defined. As explained at column 17, line 33, May uses a symbology which verbally explains all the terms and conditions of a derivative transaction. At column 18, 11 classes of instrument are defined and later on in the column, symbols are adopted for each of these classes. The symbols enable the underlying structure of the derivative instrument to be defined (see column 18, line 32).

The manner in which credit is handled is described at column 23 et seq. The initial paragraph of column 23 states that in prior art systems credit limits were usually expressed in amounts of currency which equates with the quantity or volume of a particular trade. The amount of the limit decreases as trades are executed between the parties. It then goes on to discuss settlement after a few days and states at line 17 that “[t]his is vastly different from derivatives trading where the amount at risk is not normally equal to the principal or quantity of the transaction and the obligations under the contract may continue into the future.” Derivative trades can be anything from Spot “(the normal settlement of a foreign exchange contract) to thirty years into the future. Therefore, the resulting credit exposure...is over the life of a contract of an unknown amount.”

Accordingly, the May system adopts the idea of credit preferences which it defines as methods or rules selected by a business unit with a credit group for the system to use to screen prices. Three credit groups are mentioned (column 23, lines 53 - 56). The third of these is Foreign Exchange. The credit preferences are as follows:

1. Binary. This is a simple yes/no decision as to whether or not you will trade with a counterparty.

2. Line Binary. This takes into account the maturity of the financial contract, which is quoted in months from the trade date.

3. Complex. This is based on the RQ (Risk Quotient) of each contract within maturity bands.

Risk Quotient is a term which is explained in detail at column 24, line 45 et seq.

The binary credit model of method one is the closest to the assigning of actual credit limits used in the Howorka system. However, as is stated at column 24, beginning at line 15, a business unit “maybe a yes or no determination as to whether or not they will deal with a particular counterparty for a particular credit group....there is no maximum maturity limit or quantity limit i.e. amount in the binary method.”

As can be seen from the above, May does not relate to a system having an environment where a credit limit is set and parties trade up to that limit whereupon the limit must either be reset or no further trading can take place, as in the Howorka system.

Further, since May utilizes a different approach to credit, May neither teaches nor suggests the netting of credit as defined by the independent claims of the present invention. For at least these reasons, even if it were proper to combine Howorka and May, which it is not, for the reasons discussed above, the combination does not, in any event, teach or suggest at least the feature of netting of credit as defined in the independent claims.

The Office Action took the position that column 21 lines 47 and 48 of May teaches this feature. However, this extract is taken from a discussion of the symbology adopted to capture the parameters of a derivative which affect the instrument's valuation. A number of default values are provided which are assumed at all times. The “net payments” cited in the Office Action is one of these default values.

The definition of net payments given is that “net payments will be assumed for all transactions completed through the system 10.”

The key word in this portion of May is “payments.” This is referring to settlement of trades between parties, that is, the known technique of netting payments. Netting payments is a settlement issue which takes place after trades have been completed. As discussed above, the independent claims relate to the netting of *credit limits* rather than how to settle payments in completed trades.

In summary, for at least the aforementioned reasons, May does not disclose the use of netting in credit limits, as in the independent claims. On the contrary, May discloses a complicated system for handling complex derivative instruments. May sets out specifically to provide a system which is wholly different from the Howorka system. The two are incompatible and intentionally so. There would be no motivation to combine the teaching of the two documents. Indeed, the documents teach away from one another. Even if that combination was made, there is still no disclosure of netting of credit limits. In short, the combination would not lead to the invention as claimed, even were the combination proper, which it is not.

New independent claim 63 recites, inter alia, a credit engine that comprises a credit adjuster for varying the credit available to a party for further trades by the amount of an executed deal, the amount of available credit being varied in an opposite direction for a buy deal to a sell deal. This adjustment has similar advantages to the credit netting feature recited in the other independent claims and is neither taught nor suggested in Howorka or May. Claim 64 recites a similar feature and is believed patentable for similar reasons.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the

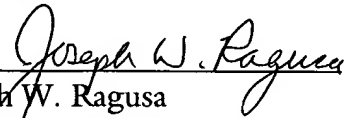
invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Dated: December 1, 2003

Respectfully submitted,

By

  
Joseph W. Ragusa

Registration No.: 38,586

DICKSTEIN SHAPIRO MORIN &  
OSHINSKY LLP

1177 Avenue of the Americas

41st Floor

New York, New York 10036-2714

(212) 835-1400

Attorney for Applicant